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Introduction

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Chapter 1

Introduction

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Research, practice and even leisure interests in archaeological heritage point to the fact that there are many different values at play. These conflicts of interest might be as recognisable as a developer's wish to exploit a site, thwarted by heritage legislation protecting that particular category, through to the often complex ranges of different meanings that local communities and individuals may associate with a place, which may have little or no resemblance to the 'expert' opinion (see, e.g. Laurajane Smith's premise of the Authorised Heritage Discourse – Smith 2006). Even efforts to make archaeological knowledge more open and accessible to the public can be strictly underpinned by the ideology of the national policy behind it (e.g. Börjesson, Petersson and Huvila 2015). The difficult issue of heritage protection is also complex – with options of preserving in situ, reusing, conserving and a whole range of preventative or restorative measures affecting what 'protection' might actually mean in practice.

The inspiration for this volume came from a series of discussions and meetings surrounding sessions held mainly at the annual meetings of the European Association of Archaeologists. From a range of sessions and debates, one apparent theme became obvious; what are the challenges and conflicts in heritage stewardship that may be obvious to the heritage practitioner but which are poorly defined or invisible to the legal frameworks that actually protect cultural heritage? Whilst the daily frustrations and limitations of the job may appear obvious to those who face the challenge of heritage protection, they are rarely considered in a structured or thoughtful way; rather, the standard measurement of the effectiveness of legislation is often measured against international (or European, in our examples) benchmarks of 'good practice' such as the recommendations of the Valletta Convention. The impact of the Faro Convention broadens the issue further, considering as it does the impact of cultural heritage on communities and society as a whole. Whether such laws and agreements work in practice, or whether there are problems that cannot be solved by a legal framework, are often at best moot points. Yet they are also crucial as to whether a cultural heritage framework can actually protect and preserve on a daily and practical basis.

Consequently the contributors to this volume were given what might appear to be a simple task; to discuss issues or challenges in heritage management that could not be resolved or protected by the law or where legal frameworks had proved less than satisfactory in resolving issues. As a complementary topic, they were asked to consider cases where laws might turn out to have unintended consequences or prove challenging to implement. It might be no surprise that our contributors chose to answer this brief in a number of divergent ways, but what came back also was what might appear to be a high level of consistency and agreement.

In considering the challenges in protecting shipwrecks in the Baltic, Riikka Alvik touches upon a range of issues from actively protecting archaeological heritage to tackling looting (and crucially, working with law enforcement to make sure that effective structures are in place), through to those issues that are outside the control of legislation, chiefly the threats posed by global warming (Chap. 2). This range of challenges, from known and quantifiable to those that are not, provides a useful introduction to the scope of this volume. In a similar vein, Ghattas Sayej considers not just the aim of the law in a liberal society but looks

beyond the ostensibly commendable intentions of the law in Norway to produce a public benefit to the unintended (and counterproductive) consequences of legislation that would otherwise seem to present a comprehensive solution to many of the problems faced by commercial development and archaeology (Chap. 3). This balance between the law as practical, and the law as presenting a cultural ideal, can be best seen in the two papers by Sergiu Musteață (Chap. 4) and Tomáš Michalik (Chap. 5). Both deal, through case studies of Romania and Moldova and Slovakia, respectively, with the difficult issues of realising an effective and democratic cultural heritage system in countries that have made the difficult transition from totalitarian Cold War era regimes. What is telling, especially from a western European perspective, are the difficulties not so much in creating the framework and legislation but in the challenges in embedding these in a society whose very notion of the citizen and the value of heritage has also had to make transitions. To those who take the ideals of the Valletta Convention for granted (and this is certainly not across the board, as evidenced by the different stances towards non-professional archaeological interventions with the heritage), these chapters are a useful, and perhaps humbling, corrective.

Many of those working in the heritage sector will agree that the translation of heritage legislation into real life is not always an easy task. One such example is the paper by Stuart Campbell, which discusses how heritage legislation can be applied practically in light of the various challenges encountered when dealing with portable antiquities, whether they are found by people using metal detectors or not. In the context of Scotland, he mentions a ‘crisis of cultural authority’ – an idea associated to a much greater extent with conflicts over the retention of human remains in museums (Jenkins 2010). He believes that: ‘...archaeologists who deal with metal detector finds face just such a challenge to their cultural and intellectual discipline’ (Chap. 6).

The idea of a ‘crisis of cultural authority’ can be seen to a much greater extent in the chapter by Liz White, providing a global overview rather than national or regional case study, which examines ongoing issues relating to the treatment and retention of human remains (Chap. 7). Both the excavation and storage of human remains have been disputed in some countries for a number of decades, and this has led to either the passing of legislation or guidance, both of which continue to bring difficulties. This by itself can bring into sharp focus an issue of wider concern, where the broad public (or at least espousing to be ‘public’) ideals of archaeology as articulated through legislation can often marginalise the values of specific cultural groups. In particular this can be seen in South Africa, where the protection of archaeological sites has excluded cultural groups for whom these sites continue to have contemporary cultural relevance (Ndlovu 2013). This problem is surprisingly widespread, ranging from the countries discussed in White’s chapter to those countries like China, where the state might be said to exert a greater control over civil life (Zhang and Wu 2016). The universality of this challenge, regardless of cultural and legal factors, is by itself a demonstration that solutions should be searched for outside of the strict letter of the law. It is most easily defined as a question of how do we, as a profession or collection of related professions, deal with groups who may feel the interests of archaeology (often viewed within the profession as equating to a wider ‘public good’) is inimical to their own aims?

This question is posed in a number of ways in the different chapters of this volume, not least in those dealing with metal-detector users. The number of contributors who chose to address this issue was initially unexpected but clearly reflects the nature of concerns within current discourse and practice. For example, Pieterjan Deckers provides a critical review of the development of policy and practice for non-professional archaeological metal detecting in Flanders (Chap. 8), whilst Jostein Gundersen provides a perspective of the challenges faced in Norway (Chap. 9). Ignacio Rodríguez Temiño, Ana Yáñez Vega and Mónica Ortiz Sánchez focus on legislation in Andalusia, Spain, and on how the enforcement of this legislation has affected metal detecting (Chap. 10). Like many of the other chapters in this volume, this provides a useful barometer of how prevalent this issue is in cultural heritage terms, when it forms the chief area of interest for many

practitioners. In particular it should be noted also the interconnection between topics. For example, whilst Michalik starts his contribution with a review and assessment of legal frameworks in Slovakia, his conclusion focuses again on metal detecting and its problematic (and in this case, illegal) impact on the archaeological record. Whilst Michalik's chapter, with its assessment of looting, may seem to encapsulate many of the issues around metal detecting and archaeology, the sheer variety of chapters within our volume demonstrate how variegated this area is, running the gamut from those which deal explicitly with looting and illegal behaviour to those chapters that describe what is a law abiding and frequently constructive area of non-professional engagement with the past. It is often the case (at least in the experience of the editors) that the worst case scenario is often presumed with regard to metal-detector users, that they form a group who will break the law in pursuit of profit. The range of papers here certainly demonstrates a more complex picture and most of all shows that the nature of metal detecting varies on a country by country basis, reflecting a range of factors from the law and the potential of illicit profit to the extent of legally acceptable public access to archaeological materials. Whilst not denying the challenges inherent in promoting a culture of responsible metal detecting, we would submit that the bleakest outcome should never be assumed. Opportunities for cooperation and information sharing exist, as well as mandates for prosecution and prevention.

It is, in fact, the divergence in this area that most usefully demonstrates the tension at the heart of heritage legislation. Whilst on one hand, the aspirations and ideals of the Valletta Convention point to a recognised and accepted need that there are universal tenets that should be found in heritage laws across Europe, the other theme pulls in an opposite and contrasting direction. When reviewing the range of chapters within this volume, it becomes evident that, no matter what ideals of universal good practice may be ascribed to, it is impossible to ignore how widely variant the law is in different jurisdictions. This, by itself, varies the degree to which cultural heritage can be protected. When reviewing the picture here, it is clear that the ability to protect an archaeological monument, claim state ownership over an artefact or enforce and protect in other ways is defined and constrained by that state's legal framework rather than reflecting a wider and universal ideal of cultural heritage protection (notwithstanding the elements of universality, in Europe at least, that the Council of Europe's conventions do achieve). At the same time, chapters such as Musteață's demonstrate how essential these national frameworks are; not all countries start from the same place (particularly those undergoing the difficult transition from former totalitarian regimes), and Musteață demonstrates even how different (though complementary) the approaches of two countries such as Romania and Moldova can be, even though they are on similar trajectories. On a more pragmatic level, how can we square a universal acceptance that chance finds of archaeological material are part of the national patrimony when the laws in different countries ascribe completely different ownership to these finds, whether state, finder or landowner? This question is admittedly as much rhetorical as it is literal, yet it usefully illustrates the divergence between an international ideal and what may be possible by the law of any one country. The gap between this ideal and legal definition is best summed up as the space in which other competing values can fill, whether they are those of the illicit market or the more innocent values of the law abiding metal detector user. It is, by its very definition, an area that is not demarcated by law.

It is precisely in this non-demarcated area, one in particular that is not mapped in any legislation, that a variety of motivations and actors come into play. Whilst more subtle than the problem of legislation impacting on the way of life of a cultural or social group, the question of how other parts of society view heritage legislation remains pertinent. Reading these chapters, it is striking how often other interest groups, whether divers or metal-detector users, form coherent groups, with coherent responses to government agencies; the reluctance of metal-detector users to lend their help to archaeological research projects that Michalik highlights is one such instance. This itself is a useful juncture at which to question what a citizen might expect in their interaction with the state, especially if the 'official' treatment of archaeology may be seen as personally disadvantaging them. Arguably, many of the issues that Musteață

and Michalik highlight may have their issues in a residual distrust of the state in former totalitarian regimes. Nevertheless, these same issues can be found across Europe, as the chapters on metal detecting testify, and can perhaps be found also in the caution that the Norwegian property developer exhibits in Sayej's chapter. In response, the idealisation of archaeology as a public good for universal benefit is made clearly and articulately in the chapter from Spain, espousing precisely why activities for personal benefit can and should be restricted. In contrast to this idea of the public good pushing back against a variety of private benefits, one other common factor in these chapters should be noted: principally the commodification of archaeological material. Whilst this can manifest in the issue of organised criminal looting on both land and sea, it can also be seen to affect other areas. For example, the very existence of a legal market in antiquities can cause effects as varied as a counterfeiting workshop in Slovakia and distort the reporting of artefacts in Scotland as their importance is gauged not so much by their archaeological significance, but how much they might fetch on the legal market. Effectively, the licit market can mean that 'collectible' is conflated with 'archaeologically interesting'.

Amongst this intermixture of universal problems and unique national variants, it is the universal and accepted ideal of archaeological heritage that is the common factor in this volume, motivating our contributors to propose and argue for a variety of solutions to these problems. At the same time, that these 'others' who interact with the archaeological heritage form coherent and (sometimes) resistant groups can in itself be a solution, from Finnish divers to Scottish metal-detector users, this volume demonstrates also the value of public and community engagement and outreach.

This volume clearly demonstrates through its broad topics that there are diverse challenges being encountered due to inevitable clashes of values, priorities and agendas. Yet despite this, there are also many commonalities. It is hoped that the experiences shared in this volume are not only of help to those with an interest in heritage protection but will also help to foster meaningful discussion and debate about the future of heritage protection.

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